LIBRARY
SUPREME COURT, U. S.

FILED
JAMES R. BROWNING, Clerk

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 334

ALFRED J. HEINECKE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STANLEY M. DIETZ
210 C Street, N. W.
Washington 1, D. C.
Attorney for Petitioner

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1
Citations to the Opinions Below	1
Jurisdictional Statement	2
Statement of Questions Presented	2
Statutes and Rules Involved	4
Statement of the Case	4
Reasons for Allowing the Writ	7
Conclusion	17

APPENDIX

Decision U.S. Court of Appeals, July 27, 1961	1a
Statutes:	
Constitution of the United States:	
Amendment I	6a
Amendment IV	6a
Amendment V	6a
Amendment VI	6a
18 United States Code 1461 (1958)	7a
18 United States Code 371 (1958)	8a
22 District of Columbia Code 2001 (1951)	8a

TABLE OF CASES

Brotherhood of Carpetners v. United States, 330 U.S. 395	7
Burrows v. United States, U.S. App. D.C., No. 15890	11
Giordenello v. United States, 357 U.S. 480	11

TABLE OF CASES
(Cont'd.)

	Page
Go-Bart Co. v. United States, 282 U.S. 344	11
Gollin v. United States, 166 F.2d 123	8, 9
Gouled v. United States, 255 U.S. 298	11
Hair v. United States, App. D.C. No. 15878	11
Horning v. District of Columbia, 254 U.S. 135	7
Lefkowitz v. United States, 285 U.S. 452	11
Morrison v. United States, 262 F.2d 449	11
Murdock v. United States, 290 U.S. 389	7
Roth v. United States, 354 U.S. 476	3, 6, 14, 15, 16, 17
Smith v. California, 361 U.S. 147	13, 16
Sullivan v. United States, 178 F.2d 723, 85 U.S. App. D.C. 409	9
Womack v. United States, 365 U.S. 859	15

STATUTES

Constitution of the United States:	
Amendment I	3
Amendment IV	2
Amendment V	2, 3
Amendment VI	2, 3
United States Code:	
Title 18, Section 1461	2, 4
Title 18, Section 371	2, 4
District of Columbia Code, Title 22, Section 2001	2, 4

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1960

No.

ALFRED J. HEINECKE,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Alfred J. Heinecke, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on July 27, 1961.

Citations to the Opinions Below

On the 27th day of July, 1961, the United States Court of Appeals for the District of Columbia Circuit, issued its decision and opinion affirming Petitioner's conviction by the United States District Court for the District of Columbia, on January 27, 1961, in Criminal Case Number 1023-60. The case number in the United States Court of Appeals was 16194. (A-) (Record, p.). Said Petitioner was convicted on twenty-six

counts for violations of Title 18 U.S. Code Section 1461 (1958), one count for violation of 18 U.S. Code Section 371 (1958) and one count for violation of 22 D. C. Code Section 2001 (1951).

Jurisdictional Statement

The petitioner was indicted in a thirty-five count indictment for alleged violations of Title 18 U.S.C. Section 1461. Title 18 U.S. Code Section 371 and Title 22 D. C. Code Section 2001 in that in sixteen counts petitioner was charged with knowingly distributing circulars through the mails giving information where, how and from whom and by what means obscene materials could be obtained and in sixteen counts petitioner was charged with knowingly sending through the mails obscene material, namely the same advertisements involved in the alternate counts and in one count with conspiracy to violate the obscenity statutes and in one count with printing of obscene matter.

The United States District Court for the District of Columbia had jurisdiction over this case. The decision and judgment of the United States Court of Appeals for the District of Columbia Circuit was entered July 27, 1961. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Section 1254.

Statement of Questions Presented

The questions presented by this Petition are:

1. Whether the District Court erred in instructing the jurors that the alleged obscene material at issue was "obscene in the eyes of the law," amounting to a directed verdict of guilty, denying petitioner a fair trial in violation of Amendments V, VI, Constitution of the United States of America.

2. Whether the District Court erred in failing to suppress certain evidence at pre-trial motion and admitting said matter into evidence over the petitioner's objection, and in refusing to allow the petitioner to introduce evidence to prove there was no probable cause for issuance of a search warrant of the petitioner's home where said evidence was seized, in violation of Amendment IV, Constitution of the United States of America.

3. Whether the District Court erred in failing to allow the petitioner to prove to the jury what matter would constitute "contemporary community standards" in the District of Columbia, when the petitioner offered in evidence a collection of art instruction books, comparable and similar to the petitioner's books at issue, and in unquestioned circulation in the District of Columbia, which the government contended were obscene; and collections of nudist magazines and periodicals for sale and available at news-stands in the District of Columbia and through the United States mails, which the Supreme Court of the United States has held to be not obscene and mailable, such as copies of Sunshine and Health Magazine; all of which materials the petitioner offered through the testimony of a qualified psychologist, whom the District Court refused to qualify as an expert in the field of "contemporary community standards" even though said expert had written several books and papers on that particular topic, and had devoted his entire professional career to a study of such matters. The material offered by the petitioner and rejected by the District Court was essential for the jury to properly decide the question of whether or not the petitioner's materials offered by the government and accepted in evidence were obscene under the test set forth by this Court in the case of Roth v. United States, 354 U.S. 476, denying petitioner a fair trial in violation of Amendments V, VI, Constitution of the United States of America.

4. Whether the petitioner was denied by the United States District Court for the District of Columbia, a fair trial as constitutionally provided in the Fifth and Sixth Amendments of the Constitution of the United States of America, and the protection of the First Amendment to the Constitution of the United States of America because the District Court refused to allow the petitioner in any way to defend his books which the government alleged to be obscene by refusing to allow qualified artists to demonstrate the uses for petitioner's books at issue; and by insulting petitioner's expert witness, resulting in said witness, an ordained Minister of the Gospel, refusing to testify any further, and in refusing to instruct the jurors that the effect of the petitioner's material in evidence upon children or particularly susceptible groups is not decisive, and, in refusing to instruct the jurors that the petitioner's materials must be judged in relation to the normal adult reader and

in instructing the jurors that petitioner's photographic illustrations were seemingly depicted in lewd and lascivious positions with emphasis on the genital regions advocating the government's position and in instructing the jury that the petitioner could be convicted, even though petitioner believed the matter he placed in the mail was not obscene and even though petitioner acted upon advice of legal counsel that his actions in that regard were legal and in refusing to permit the petitioner to prove that his actions were legitimate and that his customers were persons having legitimate use for his materials and in refusing to instruct the jurors that if the petitioner's books expressed a thought or idea containing the slightest amount of socially redeeming value they were not obscene.

5. Whether the District Court erred in refusing petitioner's motion for judgment of acquittal on all alternate substantive counts of the indictment in that each envelope and contents could only constitute one violation of Title 18 U.S.C. sec. 1461, whereas the government contended in each alternate substantive count of the indictment, one envelope and contents constituted two different violations of Title 18 U.S.C. sec. 1461.

Statutes and Rules Involved

The pertinent statutes are Amendments I, IV, V and VI of the Constitution of the United States. (App. 6a)

Title 18 U.S. Code Section 1461 (1958) (App. 7a)
Title 18 U.S. Code Section 371 (1958) (App. 8a)
Title 22 D. C. Code Section 2001 (1951) (App. 8a)

Statement of the Case

Petitioner was charged by indictment with violation of Title 18 U.S. Code Section 371, in that it was alleged he conspired, with another, to violate Title 18 U.S.C. 1461 and in 16 substantive counts with violation of Title 18 U.S.C. 1461, by sending advertisements through the mail giving information, where, how, and from whom and by what means obscene matter may be obtained, and in 16 substantive counts, with using the mails for transmitting obscene matter which was the same advertising material involved in the alternate counts, and in one count with causing to be printed in the District of Columbia advertisements stating by what means obscene books may be obtained.

The petitioner entered a plea of not guilty to the indictment on December 13, 1960. At the conclusion of all the evidence, the jury found the petitioner guilty and convicted him on 28 of the counts against him, six counts having been abandoned by the government during trial; the jury's verdict being returned on January 23, 1961. Thereafter, on January 27, 1961, judgment and sentence was pronounced by the United States District Court for the District of Columbia, whereby petitioner was committed to the custody of the Attorney General for a period of 15 months to 45 months. Petitioner's conviction was affirmed by the United States Circuit Court of Appeals for the District of Columbia on July 27, 1961. The following statement summarizes the proceedings in the Trial Court:

On December 7, 1960, United States Postal Inspector Fay conducted a search of the petitioner's premises in Lakewood, New Jersey, pursuant to search warrant issued by the United States Commissioner in that District (J.A. 247 through 252). The United States Marshal, Buxo, executed the search warrant and while at the petitioner's premises obtained information for the application for a second search warrant of the petitioner's premises from the same United States Commissioner (J.A. 247 through 252) which search warrant was executed the same day. At both searches of the petitioner's premises, all of the petitioner's property was seized (J.A. 54, 55). There was no attempt to arrest the petitioner on those occasions although petitioner was physically present at both searches. Petitioner surrendered himself in the District of Columbia on December 13, 1960, and entered a plea of not guilty to the indictment on that day. The indictment was not returned by the grand jury until December 8, 1960. Petitioner filed a motion to suppress evidence (J.A. 14, 15), which was denied by the United States District Court for the District of Columbia, per Judge Holtzoff on December 22, 1960. Petitioner was prevented from showing a lack of probable cause for the issuance of the first search warrant at the hearing before Judge Holtzoff (J.A. 18 through 24), and at the trial of the case before the same Judge (J.A. 58, 115 through 117, 178; Defendant's Exhibit for Identification No. 9). Had petitioner been allowed to prove his point, he would have shown that the Postal Inspector, Fay, had no personal knowledge of contents of